

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRP.(NPD)No.3868 of 2017
& CMP.Nos.18042, 18152 & 19341 of 2017

M.Antonymsamy

....Petitioner

V.

1.S.Mumtaj

2.S.Noorjahan

3.S.Chansha

4.S.Shafi Ahamed

5.S.Sheik Mohin Abubakkar

6.S.Sheik Ibrahim

7.S.Ismail

8.J.Abdul Rahuman

9.J.Liyakath Ali

10.S.Noorjahan

11.J.Bibi John

12.J.Jaithoon

13.J.Kairunisha

14.A.Khathoon Bibi

15.S.Asrab Ali

16.S.Babu

17.J.Abdual Rahuman

18.S.Asheeya Bibi

19.S.Abdul Kaboor

20.S.Maharunisha

21.A.Jainabibi

22.B.Abdul Majith

23.A.Abdul Kadar

24.A.Jeenath

25.S.Kathoonbibi

26.A.Fathima

27.A.Sheriffa

28.A.Sulthan

29.A.Mahamooda

30.A.Bakrudeen Ali Iqbal

31.A.Ahakila

32.Minor Salman
Rep. by his mother A.Ahakila

33.Minor Nazreen
Rep. by his mother A.Ahakila

34.B.Alavudeen

35.B.Ameena



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36.S.N.Rangasamy

37.V.Visalakshi

38.R.Nandakumar

39.R.Revathy

40.R.Padmavathy

41.Lok Adalat
III Additional District Court,
Coimbatore.

42.The Sub Registrar,
Mettupalayam Sub Registrar Office,
Mettupalayam.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 10.09.2016 passed in O.S.No.135 of 2016 by the respondent No.41/Lok Adalat and consequently, direct the respondent No.42 to remove/delete the entry dated 09.02.2017 registered on its file as Doc.No.844/2017.

For Petitioner : Mr.R.Sankara Narayanan, Sr. Counsel
for Mr.Vignesh Venkat

For Respondent : Mr.Lourdu Savio

Nos.1 to 35

For Respondent : Mr.A.Dev Narendaran
No.42 Government Advocate

ORDER

The present Civil Revision Petition is filed by invoking Article 227

of the Constitution of India, to set aside the award dated 10.09.2016 passed in the Lok Adalat recording the compromise entered into between the parties to the suit in O.S.No.135 of 2016 and consequently, directing the Sub Registrar, Mettupalayam to delete the entry in the revenue records evidencing the Lok Adalat award.

2.The brief facts of the case as evidenced in the pleadings are as follows:

a)The case of the plaintiffs is that the suit property measuring 8.28 acres in S.F.No.39 in Kariampalayam Village, Coimbatore District was originally owned by one Syed Kasim Ali, who had purchased the property through a registered Sale Deed dated 14.09.1893. The said Syed Kasim Ali and his widow died intestate and the brother of the widow of Syed Kasim Ali namely, Sheik Yusuff, had succeeded to the suit property. After the death of Sheik Yusuff in the year 1954, the suit property devolved on his two sons and five daughters, whereby, the two sons were entitled to $\frac{2}{9}$ th shares each and the five daughters were entitled to $\frac{1}{9}$ th each in the suit property. The plaintiffs and the defendants herein are the legal heirs of the seven children of the aforesaid Sheik Yusuff. Since the defendants have not co-operated to have an amicable settlement, they have filed the present suit in O.S.No.135 of 2016 before the learned III Additional District Judge, Coimbatore, seeking for partition of the suit properties into 9 equal

shares and for separate possession thereof.

b)When the suit was pending, the plaintiffs and the defendants had entered into a compromise, whereby, they had agreed to have the suit property partitioned among themselves and thereby entered into a settlement memo evidencing the terms of the settlement. In the Lok Adalat held on 10.09.2016 by the District Legal Services Authority, Coimbatore, the settlement memo came to be recorded and an award was also passed. The award was thereafter registered as document No.844 of 2017 before the Sub Registrar, Mettupalayam.

3.Heard Mr.R.Sankaranarayanan, learned Senior counsel for the petitioner and Mr.Lourdu Savio, learned counsel appearing on behalf of the respondents 1 to 35.

4.The learned Senior counsel for the petitioner submitted that the entire suit as well as the subsequent terms entered between the parties was a gross abuse of process of law, since there was collusion between the parties. According to him, the suit property, though was originally owned by Syed Kasim Ali in the year 1893, had been properly and legally conveyed to various persons through registered

conveyances and by a Sale Deed dated 21.11.2012, the respondents 30 to 50 herein had lastly executed a Sale Deed in favour of the petitioner herein for a valid sale consideration. The learned Senior counsel submitted that the plaintiffs had suppressed all the encumbrances that took place in the suit property after 1893 and by colluding with the defendants, had obtained an award before the Lok Adalat. Such an act of suppression and collusion in order to deprive the petitioner herein from his title over the suit properties, amounts to playing fraud on the Court and also a gross abuse of process of law. As such, he would rely upon various decisions of this Court and prayed for setting aside the award of the Lok Adalat.

5.The learned counsel for the respondents 1 to 35 submitted that there was neither abuse of process of law or fraud played by the parties and that the suit property originally belong to Syed Kasim Ali in the year 1893 and thereafter had devolved on his legal heirs in which the plaintiffs as well as these defendants have legally succeeded to the suit properties. He would also submit that they are in possession of the suit property all these years. By relying upon the Encumbrance Certificates from 1893 till date, the learned counsel submitted that no encumbrances are reflected in these certificates and as such, it cannot be said that there were encumbrances in the suit property. Since the parties had legally entered into a settlement among themselves, the

award of the Lok Adalat cannot be found fault.

6.I have given careful consideration to the submissions made by the respective counsels.

7.The basis on which the suit has been laid is that the suit properties originally belong to one of the ancestors of the parties to the suit namely, Syed Kasim Ali, who had purchased the same through a registered Sale Deed bearing Doc.No.12/1893 dated 14.01.1893. This Sale Deed is not disputed by either of the parties. The subsequent sale by the wife of Syed Kasim Ali, who claims to be the sole legal heir, had sold the suit property to one Venkitta Rao through a registered Sale Deed through a registered document in Doc.No.296 dated 29.12.1898, after this, various conveyances took place in the suit properties, which I shall refer to later and which has not been mentioned in the plaint. The reason assigned by the respondents herein for not referring to any of these conveyances after the year 1893 Sale Deed in favour of Syed Kasim Ali, is that the Encumbrance Certificate from 1893 till date does not disclose any further encumbrance.

8.When the aforesaid aspect was further explored, it was seen that the schedule of properties for which the Encumbrance Certificate

was sought for by the parties to the suit did not carry the present survey numbers assigned to the suit property, but refers only to the old survey number namely, **Punjai survey No.39**. The relevant details in the **schedule of property mentioned by the parties to the suit in the Encumbrance certificate** are as follows:

<i>Name of the village</i>	<i>Survey no.</i>	<i>Sub registration district</i>	<i>Registration district</i>
Kariampalayam (old)- Chikkadasampaplayam (new)	Punjai Survey No.39	Mettupalayam	Coimbatore

9.The **petitioner's registered Sale Deed 21.11.2012**

describes the suit property as follows:

<i>Name of the village</i>	<i>Survey number and extent</i>	<i>Sub registration district</i>	<i>Registration District</i>	<i>Patta no.</i>
Chikkadasampaplayam	Survey No.300, acres-7.21 Survey No.293, acres-0.02 Survey No.301, acres-0.13 Survey No.302, acres-0.61	Mettupalayam	Coimbatore	1823

From the records produced before this Court, it is seen that the suit properties was originally comprised in Punjai Survey No.39, which Survey No.39 is also reflected in the Sale Deed of Syed Kasim Ali

dated 14.01.1893. Thereafter, it has been resurveyed and numbered as Survey Nos.300, 293, 301 & 302. Since the parties to the suit had applied for Encumbrance Certificate from the year 1893 till date by quoting the old Survey No.39, no encumbrances were reflected in connection with Survey No.39, which quiet obviously will not reflect in view of the change in the survey numbers.

10.The revision petitioner on the other hand, have also produced their Encumbrance Certificates for the suit property from the year 1893 to 25.07.2017, which reflects various conveyances after the Sale Deed dated 14.01.1893 in favour of Syed Kasim Ali. The **details of these encumbrances** are as follows:

i) *Sale deed dated 14.01.1893 executed in favour of Syed Kasim Ali*

ii) *Sale deed dated 29.12.1898 executed by Kathusa Bivi, (widow of Syed Kasim Ali) in favour of Venkitta Rao*

iii) *Sale deed dated 18.07.1899, executed by Venkitta Rao in favour of Podusu Rowther*

iv) *Sale deed dated 02.06.1903 executed by Podusu Rowther in favour of Rangan Chettiar and Meerasa Rowther*

v) *Sale Deed dated 22.03.1916 executed*

by the legal heirs of Meerasa Rowther in favour of Rangan Chettiar

vi) Settlement Deed dated 11.11.1927 executed by Rangan Chettiar in favour of his sons Subbaraya Chettiar and Palaniappa Chettiar.

vii) Sale Deed dated 09.11.1928 executed by Subbaraya Chettiar in favour of Silamban Chettiar.

viii) Registered Will dated 27.09.1960 executed by Kuttiammal, (wife of Silamban Chettiar) in favour of Ramasamy Chettiar

ix) Partition Deed dated 30.03.1970 executed between Ramasamy Chettiar and his five sons

x) Partition deed dated 05.05.1974 executed between Ramasamy Chettiar & sons and Nanjappa Chettiar

xi) Sale Deed dated 21.11.2012 executed by the legal heirs of Nanjappa Chettiar in favour of the petitioner herein.

11.As stated earlier, the old Survey No.39 has been resurveyed

and numbered as Survey Nos.300, 293, 301 & 302 and when the

revision petitioner had applied by quoting the Resurveyed numbers, all these encumbrances, after the year 1893, came to be reflected.

12.The question that now arises for consideration is as to whether, the parties to the suit had wantonly applied for an Encumbrance Certificate by quoting an old survey number in order to obtain a "Nil Encumbrance" after the year 1893. In this context, the **schedule of the suit property, as reflected in the plaint**, was compared and the following survey numbers was found to be mentioned therein, which reads as follows:

<i>Name of the village</i>	<i>Survey no.</i>	<i>Extent of properties</i>
Chikkadasampalayam	Old survey no.39 New survey nos.300, 293, 301, 302	8.28 acres

In the Encumbrance Certificate applied by the parties to the suit, it is seen that the certificate was issued on 18.05.2015 and the survey number of the suit property in the Encumbrance Certificate does not refer to the Survey Nos.300, 293, 301 & 302, but carries only the old Survey No.39. However, when the suit came to be filed in the year 2016, the new Survey No.300 has been incorporated in the suit schedule of property and the total extent has been shown as 8.28 acres.

13. Thus, it is seen that the plaintiffs had clear knowledge about the new Survey No.300 but has now relied upon the Encumbrance Certificate before this Court, in which Survey No.300 has been omitted. The very fact that the Encumbrance Certificate which now relied upon even before this Court to prove that they are bona-fide persons itself goes to show that the parties to the suit had fraudulently relied upon their "Nil Encumbrance Certificate" and filed the suit.

14. To worsen things within a short period of about 5 months, they had chosen to report before the Lok Adalat that they have amicably settled the dispute among themselves and obtained an award for partition of suit properties among themselves by metes and bounds, by recording a memo of settlement.

15. Yet another glaring factor which would support the possibility of a fraud committed by the parties is that the plaintiffs had chosen to produce only three documents in support of their plaint, namely,

1. The certified copy of the registered Sale Deed dated 14.01.1893.

2. Death certificate of Sheik Yusuff dated 20.06.2007

3. Legal Heirs Certificate of Sheik Yusuff dated 26.09.2007

16. Curiously, the plaintiffs claimed to be in possession of the suit properties in their plaint. But, there is absolutely no reference to any revenue documents standing in their names or of their ancestors. The only document which might correlate the suit property with them is the Sale Deed dated 14.01.1893 standing in the name of Syed Kasim Ali, under whom the parties claimed to be the descendants. As stated earlier, the various encumbrances made thereafter have been suppressed. On the other hand, the various registered conveyances after 1893 evidences that the title and possession of the suit property have been changing to various hands and the revenue records including the patta have also been changed to the subsequent transferees. These subsequent registered documents also evidences that the original Punjai Survey No.39 as it stood in the year 1893 had been resurveyed and renumbered as Survey Nos.300, 293, 301 and 302.

17. The plaintiffs have valued the suit for the relief of Partition at Rs.12 lakhs and had paid the fixed Court fee of Rs.750/- under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1965 (prior to the Amended Act of 2017). Apparently, the allegation that the

plaintiffs are in joint possession of the suit property has been made in order to evade payment of Court Fees under Section 37(1), particularly, in the light of the recitals in all the registered conveyances after 1893 which evidences that the title as well as possession has been transferred in favour of various parties, including the revision petitioner herein. The petitioner's Sale Deed also evidences that their physical possession of the property has been handed over to him in the year 2012 itself. The valuation of the suit property in the petitioner's Sale Deed dated 21.11.2012 is shown as Rs.85,06,000/-. Thus, it would only reveal that by making averments in the plaint that the plaintiffs are in joint possession of the suit property, the plaintiffs had manipulated and evaded payment of Court Fees under Section 37(1), which act would also amount to an abuse of process of law.

18. On a co-joint reading as to the manner in which the material and relevant facts has been suppressed in the plaint, the averments of possession and the valuation made in the suit and the alleged settlement arrived between the parties within 5 months from the date of institution of the suit and reporting the same before the Lok Adalat will amount to a fraud committed and consequently, an abuse of process of law.

19. When the entire facts leading to the registration of the award

obtained before the Lok Adalat is established to have been obtained by playing a fraud and the parties colluding among themselves, the award itself would be a nullity and non-est in the eyes of law.

20. The learned Senior counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in ***S.P.Chengalvaraya Naidu V. Jagannath*** reported in ***AIR 1994 SC 853*** on these proposition and the relevant observation reads as follows:-

"1. "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the

design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. ..."

21. Insofar as what constitutes a fraud or collusion has been discussed by this Court in a decision reported in **1998 (1) CTC 66 [Ranipet Municipality V. M. Shamsheerkhan]** and this Court made the following observations:

"9. It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court' the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:-

(1) Gaining an unfair advantage by the use of a rule of procedure.

(2) Contempt of the authority of the Court by a party or stranger.

(3) Fraud or collusion in Court proceedings as between parties.

(4) Retention of a benefit wrongly received.

(5) Resorting to and encouraging multiplicity of proceedings.

(6) *Circumventing of the law by indirect means.*

(7) *Presence of witness during examination of previous witness.*

(8) *Institution vexatious, obstructive or dilatory actions.*

(9) *Introduction of Scandalous or objectionable matter in proceedings.*

(10) *Executing a decree manifestly at variance with its purpose and intent.*

(11) *Institution of a suit by a puppet plaintiff.*

(12) *Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc. (See The Code of Civil Procedure - A.I.R. Commentary to Section 151, C.P.C.) The above are only some of the instances, where a party may be said to be guilty of committing abuse of the process of Court."*

22. The issue as to whether the revision petitioner, who was not a party to the suit, can seek for setting aside an award obtained by fraud or misrepresentation is also no more *res-integra* in view of the following decisions:

1) 1998 (1) CTC 470 [J.Sivasubramanian V. N.Govindarajan],

"1. A person who is not a party to the suit, but who is aggrieved by the decree, has come to this Court, under Art. 227 of the Constitution of India, alleging fraud and collusion in obtaining the decree.

13. I feel that all these decisions will show that a duty is cast on the litigant to plead, pray and get relief by placing all materials before Court. By suppressing facts and without impleading the necessary parties, a collusive decree is obtained. In the case on hand, the collusion is apparent. A person who has no right in the property concedes the right of the plaintiff to get a decree, and that too within 49 hours of filing of the suit. The result of this is getting unfair advantage over the rights of the petitioners and to deprive them of their properties. Both the respondents were aware that the petitioners are in possession on the basis of documents. They themselves (i.e. parties to the suit) admit the possession of the petitioners. But, without disclosing any of these documents, the power of attorney (agent) filed the suit against the principal and gets a decree, by consent. I have already stated as to what is the legal effect, i.e., the second respondent (defendant) himself is the plaintiff and defendant. It will be unjust to accept the contention of the respondents. Such a collusive decree also cannot

be allowed to stand. After coming to know of these facts, if any Court shuts its eyes to realities, it will cease to be a Court of Justice. By invoking the judicial supervisory jurisdiction, I declare that the decree in O.S.No.7631 of 1997, on the file of XV Assistant Judge, City Civil Court at Madras is a nullity and on the basis of the said decree, possession of the petitioners shall not be disturbed. I further find that since the suit is filed fraudulently, the same is liable to be quashed, and I do so. O.S.No.7631 of 1997 is struck off from the file of the lower Court. The Civil Revision Petition is allowed with costs. Advocate's fee Rs. 2,500 (Rupees Two thousand five hundred). CMP. No. 17556 of 1997 for stay is closed."

2)Manu/AP/0554/2009 [Batchu Subba Lakshmi V. Sannidhi Srinivasualu]

"7. Under Section 21(1) of the Act an award of Lok Adalat shall be deemed to be decree of a Civil Court and under Section 21(2) of the Act every award made by Lok Adalat shall be final and binding on all the parties. No appeal shall lie to any Court against the award, and therefore, ordinarily a writ petition challenging award is also barred. But there may be situations

where there being no compromise or settlement as envisaged under Section 20(3) and (5) of the Act, Lok Adalat may have passed an award. In other words, what would be the position if Lok Adalat passes an order even without parties arriving at a compromise or settlement among themselves. In such a situation, it cannot be said that there is an award of Lok Adalat, which can be enforced by a Civil Court as a decree. There may be yet another situation where in the absence of the parties to the lis or in the absence of one of the parties to the lis, award of Lok Adalat may have been obtained by impersonation, misrepresentation or fraud. Even in such cases, there being no valid award, Section 21(1) of the Act is not attracted. Having regard to the language of Article 226(1) of *Constitution of India*, which empowers the High Court of a State to issue writs, orders or directions against any public authority or against authorities discharging public functions, the High Court can entertain a writ petition against an award of Lok Adalat. The phrase 'for any other purpose' appearing in Article 226(1) of *Constitution*, in our opinion, is broad enough to take within its purview the situations where a statute contains 'no Certiorari clause'. It is well settled that 'no Certiorari clause' in a statute does not bar the Constitutional Court from entertaining a petition for redressal of grievance

and issue an appropriate order ex debito justitiae. Therefore, in either of the situations or any such other situations, a writ petition would lie.

Who can file writ petition challenging the Lok Adalat Award

8. The parties to the compromise or settlement, which is the basis for award of Lok Adalat, no doubt entitled to challenge the award on any of the grounds referred to herein above grounds. Ordinarily, a third party cannot challenge the award in a writ petition even if such award causes prejudice. The remedy of such party would be to institute a separate suit or proceeding for necessary redressal and seek appropriate decree of declaration by filing a suit within the period of limitation prescribed under law. Under Section 34 of the [Specific Relief Act, 1963](#), any person entitled to legal character or any right as to any property, may file a suit for declaration. Under this provision, any person can even institute a suit for declaration that the decree passed by Civil Court in an earlier suit is not binding on him. When a civil Court can even declare that an earlier decree of the Court is not binding on the party before it, we do not see any objection for a third party to institute a suit in a civil Court seeking a declaration that the award of Lok Adalat is not binding on him/her subject to the law of limitation. We however hasten to add

that there may be extraordinary cases where a third party is meted with injustice at the behest of two or more conniving and colluding parties, who may have obtained an award of Lok Adalat by fraud or misrepresentation only to defeat the rights of such third party. In such cases within a reasonable period such third party may maintain a writ petition. But in such cases, there should be prima facie evidence of fraud or misrepresentation or collusion in obtaining the award of Lok Adalat. Even if such allegations are made and the question involves complicated questions of fact requiring voluminous evidence, third party should be left to seek remedy in a civil Court rather than preferring extraordinary remedy under Article 226 of Constitution.

13.Reverting to the facts of this case, there is no dispute that respondents 1, 2 and 4 are partners in 3rd respondent firm. There is also no dispute that respondents 1 and 2 filed O.S. No. 1 of 2004 against third respondent and its Managing Partner, the fourth respondent, for dissolution of firm and rendition of accounts. On 07.2.2004, plaintiffs and defendants therein signed memorandum of compromise and settlement whereunder they agreed to withdraw from the firm and fourth respondent was permitted to continue the business till 31.3.2008, failing which it shall be open to first respondent to execute the decree and recover possession of

vacant site used as stockyard for the business of third respondent. The award passed by Lok Adalat on 07.2.2004 was signed by respondents 1 and 2. Fourth respondent signed on his behalf and also on behalf of third respondent firm. Either on the date of award of Lok Adalat or during pendency of suit before District Court, Nandyal, allegation of reconstitution of third respondent firm with petitioners and fourth respondent as new partners was not revealed. There is also no dispute nor it can be denied that partnership deed dated 01.4.2003 was executed by petitioners and fourth respondent on the stamp papers which had been produced (sic. purchased) by third respondent firm on 27.3.2001 long prior to disputes arose among respondents 1 to 4. This creates any amount of doubt on the case put up by petitioners. This doubt becomes strong when we realised that the petitioners 1 to 3 are stepmother, wife and grandfather respectively of fourth respondent and they are all living under the same roof. The allegation made by respondents 1 and 2 in their counter affidavit remains uncontroverted. These lend support to the submissions made on behalf of respondents 1 and 2 and we do not see strong reasons to discredit those submissions."

3)2013 (6) CTC 166 [P.Subramani V. A.Periyasamy]

"21. In the present case, the entire proceedings relating to delivery of possession are vitiated by fraud. When an order is obtained by resorting to fraud, all the subsequent proceedings thereto will also render it vitiated. In this context, I am fortified by the decision of this Court reported in (J. Sivasubramanian and another vs. N. Govindarajan and another) 1998 1 CTC 470 relied on by the learned counsel for the revision petitioner. In that case, this Court took note of the fact that the suit was filed by suppressing material facts and by not impleading the proper and necessary parties. This Court held that fraud and collusion are palpable and that the decree was obtained by power of attorney agent as against his own principal thereby depriving his right over the property, which was purchased by him from the original owner. As the power agent filed the suit by suppressing the material facts, this Court held that "....in such cases, it is the duty of the Court to see that the suit itself is wiped off from the file." It was also held by this Court that in such circumstances the revision petition under Article 227 of the Constitution of India is very much maintainable. In that case, this Court, relying on the decision of the Honourable Supreme Court reported in S.P. Chengalvaraya Naidu (dead) by Lrs vs. Jagannath (dead) by Lrs and others, 1994 (1) SCC 1 culled out the legal propositions as follows:-

"12. In *S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. and others*, , their Lordships have decided as to what is meant by 'fraud'. In paragraph 6, Their Lordships have held thus:- "... A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage ¹⁴ of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage..." Their Lordships have further said thus:- "A litigant who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the Court as well as on the opposite party." In the earlier portion of that Judgment, their Lordships have held thus:- "... We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation." The effect of such a decree obtained in such cases is also stated in that judgment thus:- "... The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands.... A judgment or decree obtained by

playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any court even in collateral proceedings." In Mahboob Sahab v. Syed Ismail and others, of the judgment, Their Lordships declared thus:- "... The reason is that fraud is an extrinsic collateral act, which vitiates the most solemn proceedings of courts of justice. If a party obtains a decree from the Court by practicing fraud or collusion, he cannot be allowed to say that the matter is res judicata and cannot be reopened. There can also be no question of res judicata in a case where signs of fraud or collusion are transparently pregnant or apparent from the facts on record." In paragraph 10, Their Lordships further declared thus:-

"... Section 44 of the Evidence Act envisages that any party to a suit or proceeding may show that any judgment, order or decree, which is relevant under Sections 40, 41 or 42 has been obtained by fraud or collusion. Under Section 40, the existence of the judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial." In Indian Bank v. Satyam Fibres

(India) Pvt. Ltd., it was declared thus:- "The authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (Fraud et jus nunquam cohabitant). Fraud and deceit defend or excuse no man (Fraud et dolus nemini patrocinari debent). The judiciary in India also possesses inherent power, specially under Section 151, CPC., to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rule, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an

order obtained by fraud practised upon that Court."

23. On a overall appreciation of the observations in the aforesaid decisions, I am of the view that the award before the Lok Adalat was obtained by fraud and collusion exercised by the parties to the suit and as such, the award itself has no validity and deemed to be non-est. It is a settled law that fraud vitiates all solemn acts and an award obtained by playing fraud is nullity. Hence, this Court would be justified in setting aside the award by exercising its power under Article 227 of the Constitution of India.

24. The 42nd respondent herein is the Sub Registrar of Mettupalayam, Sub Registrar Office, who has registered the award passed in O.S.No.135 of 2016. It cannot be said that the Sub Registrar did not have jurisdiction to register the Document No.844/2017, since he is not empowered to conduct a roving enquiry into the validity of the award. Nevertheless, since this Court has now found that the award itself is illegal and non-est in law, it would be appropriate to direct the Sub Registrar, Mettupalayam, for removal of the entries in the Sub Registrar records dated 09.02.2017 made in Doc.No.844 of 2017.

25. In a decision of this Court made in W.P.No.5995 of 2014 dated 22.07.2016, this aspect was discussed as follows:

"3. The learned Counsel appearing for the petitioner submits that the petitioner is the owner of certain lands in Survey Nos. 314/1, 315/1A, 328/2A, 324/2B, 325/1, 325/1C, 326/1A and 326/1C and that he is in possession and enjoyment of the same. According to the petitioner one Murugan, S/o. Kumarasamy, made an attempt to disturb his possession and the petitioner was therefore constrained to file a suit in O.S.No.714 of 2010 on the file of the First Additional District Munsif Court, Tirunelveli, seeking the relief of declaration and permanent injunction. It is further submitted that the said suit was decreed on 30.03.2011 and that it has become final. He further submits that he produced the decree after obtaining the certified copy to the respondent for registering the same under Section 18 of the Registration Act. Since, the respondent has refused to register the same, the petitioner is before this Court.

4. The respondent filed a counter inter-alia contending that the petitioner did not present the document for registration within the time limit stipulated under Section 23 of the Registration Act. Decree of a Civil Court is not required to be registered under Section 17 of Registration Act. This Court for obvious reasons entertained a

doubt and wanted to rule out the possibility of collusion in getting a decree especially having regard to the fact that the decree is an ex parte decree. Hence, this Court earlier, has directed the learned Government Advocate appearing for the respondent to verify whether the revenue records relating to the properties mentioned in the suit and in this writ petition stand either in the name of petitioner or in the name of the defendant in the suit against whom the petitioner had obtained the ex parte decree in O.S.No.714 of 2010.

7.It was argued by the learned counsel for the petitioner that the Civil Court decree is merely a declaration of status and it is a permanent record of Court. This contention has no merit in view of the specific provision under Section 23 of the Registration Act. Further, there is no logic in the argument if the same is tested with reference to various other documents. Secondly, this Court is conscious of the serious implications by the registration of decree or order of Civil Court which is either appealable or has not attained finality. It is also possible for any one to get a decree from Civil Court either by adopting fraud or collusion. Hence, it is always necessary and important that the person who seeks to register a decree of Civil Court may be asked to prove that the decree has become final and that it is not collusive. In the instant case, it

is brought to the notice of this Court that neither the petitioner nor the defendant in the suit has got patta in respect of the suit properties. But nevertheless registration of such decree will lead to further complication as the same will be shown as an encumbrance in respect of the properties which are the subject matter of the suit. The registration of a decree, as in the present case, will cause serious inconvenience / injury to the real owner 6 who is really a third party to the suit, when he wants to deal with the property. Taking advantage of the registration of a collusive and fraudulent decree, the person who has obtained the decree, may also persuade the revenue officials for mutation of revenue records and grant of patta in his favour by resorting to proviso to Section 14 of the Tamil Nadu Patta Passbook Act. In order to protect the interest of true owners, it is necessary for the registering authority to hold an enquiry in the case of presentation of a decree or order of Civil Court to ensure that the decree or order has reached finality and that the decree is not obtained by fraud or collusion. Though the registering authority has no jurisdiction to conduct an enquiry as to the real character of the decree, it is possible for him to require, production of minimum documents and affidavit from the concerned party so as to enable the registering authority to proceed further for the cancellation,

when it is brought to his notice that the statements on oath made by the party concerned in the affidavit and presented before the registration officer, at the time of presentation of the decree or order of Court is false.”

26. In view of the fraud played by the respondents 1 to 35 by abusing the process of law and causing serious prejudice to the petitioner herein, these respondents have not only attempted to grab the valuable lands illegally but had also havoc on the petitioner's valuable land and put him under threat of losing his lands. Such illegal and nefarious acts requires to be dealt seriously and strictly and therefore, in the opinion of this Court, an exemplary costs of Rs.1 lakh can be imposed on these respondents.

27. For all the foregoing reasons, this Court passes the following orders:

a) The award passed in the Lok Adalat held on 10.09.2016 organized by the District Legal Services Authority, Coimbatore, in connection with the suit in O.S.No.135 of 2016, recording the terms of Settlement Memo between the parties to the suit, is set aside as null and void.

b) Consequently, the suit proceedings in O.S.No.135 of 2016 on the file of the learned Principal District Judge, Coimbatore is also

declared as null and void.

c)The 42nd respondent herein namely, the Sub Registrar, Mettupalayam, Sub Registrar Office, Mettupalayam is directed to delete the entry dated 09.02.2017 registered as document No.844/2017, forthwith.

d)The respondents 1 to 35 in the present revision petition shall pay a sum of Rs.1 lakh to the petitioner herein namely, M.Anthonysamy towards exemplary costs, within 90 days from today.

28.In the result, the Civil Revision Petition stands allowed in the above terms. Consequently connected Miscellaneous Petitions are closed.

18.12.2018

Index : Yes

Order :Speaking

Note:Issue order copy on 15.02.2019

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To

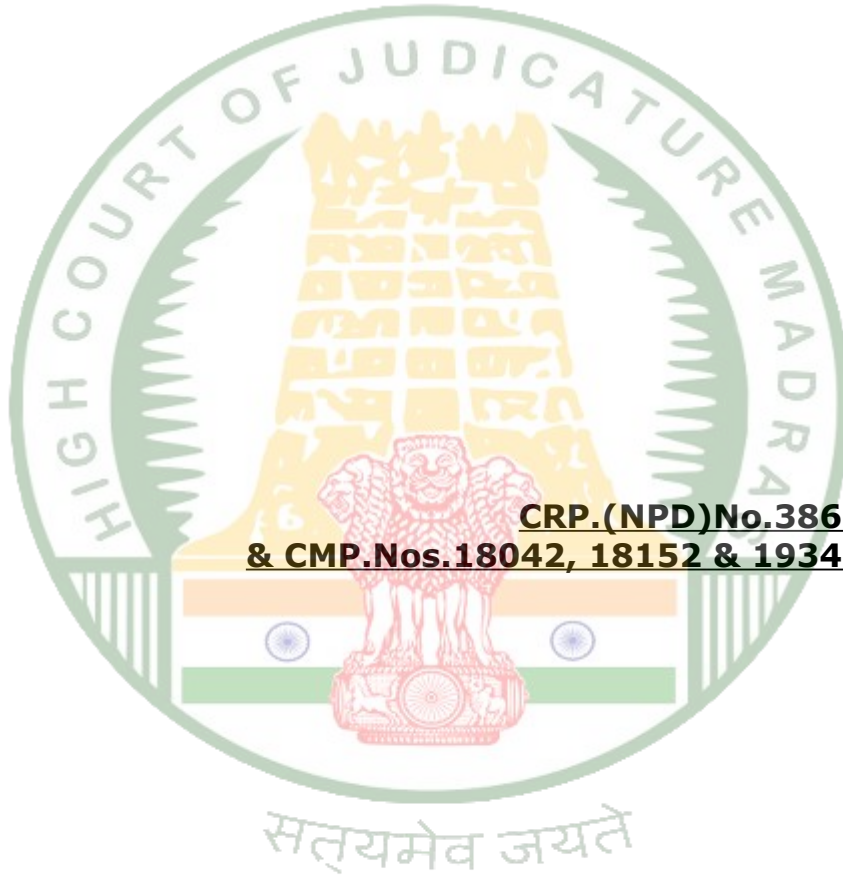
- 1.Lok Adalat
III Additional District Court,
Coimbatore.
- 2.The Sub Registrar,
Mettupalayam Sub Registrar Office,
Mettupalayam.



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M.S.RAMESH. J,

DP



**CRP.(NPD)No.3868 of 2017
& CMP.Nos.18042, 18152 & 19341 of 2017**

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18.12.2018